

U.S. Patent Application No.: 09/871,774  
Filing Date: June 1, 2001  
First Named Inventor: Roy Richardson

## **REMARKS**

Claims 1-66 are pending in this application.

### **Claim Objections**

Applicant thanks the Examiner for pointing out that applicant inadvertently labeled claim 8 as an amended claim in its last Amendment on 04/24/06. Applicant has properly listed claim 8 as “original” in the claim list above.

### **Claim Rejections**

The Examiner has rejected claims 1, 20, 30, 46 and 58 under 35 U.S.C. § 112, first paragraph.

The Examiner has also rejected claims 1, 5-7, 11, 16-18, 30, 32-35, 39 and 43-44 as being anticipated by U.S. Patent No. 5,641,463 to Langhart (“the ‘463 patent”).

The Examiner has also rejected claims 19, 45, 58-63, and 66 as being obvious in view of the ‘463 Patent. The Examiner has also rejected claims 2-4 and 31 as being obvious in view of the ‘463 Patent in view of U.S. Patent No. 3,925,942 (“the ‘942 Patent”). The Examiner has also rejected claims 10 and 38 as being obvious in view of the ‘463 Patent in view of U.S. Patent No. 4,956,042 (“the ‘042 Patent”) and has rejected Claims 20-26 and 28-29 as being obvious in view of the ‘463 patent in view of U.S. Patent No. 3,222,144 (“the ‘144 Patent”). The Examiner has further rejected claims 46, 48-49, 51-55, 57 and 65 as being obvious in view of the ‘463 Patent in

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view of Japanese Patent JP 02-072820 (“the Miyasak Patent”). The Examiner has also rejected claim 47 as being obvious in view of the ‘463 Patent and the Miyasak Patent and further in view of the ‘942 Patent. The Examiner has further rejected claim 50 as being unpatentable in view of the ‘463 Patent in view of the Miyasak Patent and the ‘942 Patent. The Examiner has further rejected claim 50 as being unpatentable in view of the ‘463 Patent in view of the Miyasak Patent and the ‘042 Patent.

Additionally, the Examiner has further rejected claims 1, 5-9, 11, 15-26, 28-30, 32-37, 39, 43-45, 58-63 and 66 as being unpatentable over the ‘463 Patent in view of U.S. Patent No. 3,682,225 (“the ‘225 Patent”). The Examiner has also rejected claims 2-4 and 31 as being obvious in view of the ‘463 Patent and the ‘225 Patent and further in view of the ‘942 Patent. The Examiner has also rejected claims 10 and 38 as being unpatentable over the ‘463 Patent in view of the ‘225 Patent and further in view of the ‘042 Patent. The Examiner has also rejected claims 46, 48-49, 51-55, 57 and 65 as being unpatentable over the ‘463 Patent in view of the ‘225 Patent in view of the Miyasak Patent. The Examiner has also rejected claim 47 as being unpatentable in view of the ‘463 Patent, the ‘225 Patent and Miyasak Patent, and further in view of the ‘942 Patent. Finally, the Examiner has rejected claim 50 as being unpatentable over the ‘463 Patent in view of the ‘225 Patent and further in view of the Miyasak Patent and the ‘042 Patent. These rejections are moot in view of the previously amended claims.

With respect to the rejection under Section 112, applicants respectfully traverse the rejection. Although the examiner correctly points out that the specification states that the

gasket “is capable of being compressed against the surface of the storage area by the lower perimeter” of the enclosure, it is not necessarily the lower perimeter itself, or the truss of the preferred embodiment, whose *weight* compresses the gasket. In the preferred embodiment, the gasket is compressed once the canopy is applied, and it is thus at least the weight of the canopy which presses against the lower perimeter of the enclosure to compress the gasket against the surface. For example, in paragraph 25, it states “A canopy of the present invention may be suspended from the ceiling of a warehouse and lowered to create the sealed fumigation chamber.” This language is sufficiently broad to encompass the claimed structure. Because the weight of the canopy causing the compression of the gasket is disclosed in the specification, Applicants respectfully request removal of the Section 112 rejection.

As noted in the response to the prior Office Action, the ‘463 patent discloses a mechanized tent that includes a tarp. The weight of this tarp is not capable of compressing the perimeter hose 62 located at the bottom of the canopy. As noted, the perimeter hose of the ‘463 patent is filled with water. Once the hose is filled with water, it is no longer flexible. It is designed to be rigid, to substitute for the sand snake of the prior art which caused a seal by its own weight, not by the weight of the canopy compressing it. *See* Col. 6, lines 29-30 (“the weight of the water secures the tent to the floor of the dock building.”) (emphasis added). Thus, the perimeter hose 62 of the ‘463 patent is not a gasket that is “deformable” or “capable of being compressed” to seal the chamber, because, while the hose is in use, it is rigid and filled with water. Furthermore, the ‘463 patent does not teach, suggest, or even contemplate the weight of the canopy compressing the gasket. It is the weight of the hose itself, and the water it contains,

that secures the tent. The Examiner even acknowledges, later in the office action, that “Langhart fails to explicitly teach” the element of compressing the gasket by the weight of the canopy. *See* Office Action at page 10. Accordingly, the claims 1, 20, 30, 46 and 58 as previously amended clearly overcome and are distinct from the disclosure of the ‘463 patent.

None of the other prior art references, alone or in combination, cited by the Examiner remedy this deficiency of the ‘463 Patent. Specifically, the newly cited reference, the ‘144 Patent, does not remedy the absence of a deformable gasket that is compressed or compressible by the weight of the canopy. The ‘144 patent relates to a garage door with weather stripping at the bottom. The weather stripping, whether or not it is a gasket, is not compressed “by the weight of the canopy” or of anything else. To the contrary, “[t]he weather-strip 90 is semi-rigid so that it normally supports the weight of the door about 1/2” above the door sill, when closed, but can be forcibly flattened, by pushing down on the door handle 86, to permit the door to move downward another 1/4”.” ‘144 Patent at Col. 2, lines 27-31. The weather stripping of the ‘144 Patent is also not designed to be compressed to create a seal. It is merely used “so that the door can be forcibly moved downward between first and second closed positions.” ‘144 Patent Col. 3, lines 54-56. The ‘144 Patent does not teach or suggest a gasket that forms a seal and is compressed by the weight of the canopy. No other reference cited by the examiner discloses this claimed feature. As such the Examiners rejections should be withdrawn.

The dependent claims 2-19, 21-29, 31-45, 47-57, and 59-66 depend from independent claims 1, 20, 30, 46, and 58 are allowable for the same reasons given for the

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independent claims. Furthermore, the dependent claims recite numerous additional features not found in the prior art cited by the Examiner. Therefore, the dependent claims are also in condition for allowance and the Examiner's rejections should be withdrawn.

Applicant acknowledges with appreciation that the Examiner has deemed claims 12-14, 27, 40-42, 56 and 64 allowable as being dependent upon a rejected base claim. In light of the arguments presented herein, the Applicant respectfully submits that any amendments made at this time are unnecessary.

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### CONCLUSION

It is respectfully submitted that the claims in this application are all considered allowable over the relevant art of record. Applicant respectfully requests an early notice of allowance.

If the Examiner believes that direct communication with the Applicants' attorney would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,  
SCHNADER HARRISON SEGAL & LEWIS LLP

Dated: 1/8/07

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